

## **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated April 29, 2009 (hereinafter Office Action) have been considered. Claims 1 and 3-40 remain pending in the application. Claim 1 is amended herein. No new matter has been added. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1, 3-25 and 32 are rejected based on 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,658,289 to Helland (hereinafter “Helland”) alone, or alternatively in view of U.S. Patent No. 6,760,621 to Walcott et al. (hereinafter “Walcott”).

Independent claim 1 concerns an implantable system having a controller configured to operate in a first configuration using only electrodes of the elongated support structure in the absence of other leads being received by the lead interface, and operate in a second configuration using electrodes of the intracardiac lead received by the lead interface, the system implementing cardiac activity sensing and stimulation in each of the first and second configurations.

As discussed above, Helland discloses a universal pacing and defibrillation system (See Title, Abstract). Universal pacing and defibrillation, as used in Helland, refers to pacing and defibrillation capabilities in all four heart chambers. (Abstract, Col. 2, Lines 6-10). A modification of Helland using less than the three leads disclosed by Helland would appear to render Helland unsatisfactory for the intended purpose of performing universal pacing and defibrillation. Moreover, modifying Helland so as to deviate from universal pacing and defibrillation would change the principle of operation of Helland’s device.

Independent claim 1 requires a configuration of sensing and stimulation in which only one elongated support structure is connected to the lead interface. As described above, Helland requires three leads connected to the lead interface. Therefore, Helland does not correspond to independent claim 1.

The Applicant respectfully submits that all elements of independent claim 1 are not accounted for in the rejections based on Helland and Walcott, and that the rejections should therefore be withdrawn.

Independent claim 32 concerns an implantable system having a controller configured to operate the system in a first configuration using only two or more subcutaneous electrodes that are rigidly coupled to a housing of the implantable system, and operate in a second configuration using at least one or more lead electrodes configured for intracardiac placement, wherein the controller is further configured to operate the first and second configurations in parallel such that the second configuration acquires performance data associated with performance of a particular function by the first configuration.

Helland and Walcott do not appear to disclose (1) operation of an implantable system using only electrodes rigidly coupled to a housing of the implantable system, nor (2) parallel operation of electrode configurations such that one configuration acquires performance data associated with performance of a particular function of the other configuration.

In regards to a mode of operation that uses only electrodes rigidly coupled to a housing, each of Helland and Walcott state that the device housing can be used as an electrode. (See Col. 5, Lines 63-67 of Helland and Col. 7, Lines 1-6 of Walcott). However, disclosure of a mode exclusively using multiple housing electrodes, or exclusively using multiple electrodes rigidly attached to the housing, appears absent from Helland and Walcott.

Regarding one electrode configuration acquiring performance data on the function of another electrode configuration, the Office Action appears to address this by stating “The device [of Helland] can also operate using all leads for sensing and pacing which meets the limitations of claim 32.” (Page 3). Even so, use of all leads and electrodes does not constitute disclosure of a mode where one electrode configuration obtains performance data of a function of another electrode configuration. The cited references do not appear to disclose such a mode, and the Office Action does not account for this aspect of claim 32.

For each of the reasons discussed above, the Applicant respectfully submits that all elements of independent claim 32 are not accounted for in the rejections based on Helland and Walcott, and that the rejections should therefore be withdrawn.

Each of claims 3-31 and 33-40 depend from one of independent claims 1 and 32, respectively. Independent claims 1 and 32 are not *prima facie* obvious for at least the reason that the rejections fail to account for all elements of these claims. While the Applicant does not acquiesce to the particular rejections of the dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1 and 32. Therefore, the Applicant respectfully requests withdrawal of the obviousness-type rejections of claims 1 and 3-40 and notification that these claims are in condition for allowance.

To the extent that the Applicant has not responded to any characterization in the Office Action of the asserted art or of the Applicant's claimed subject matter, or to any application in the Office Action of the asserted art to any claimed subject matter, the Applicant wishes to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Office Action's characterizations, or any other assertions or statements beyond that provided above is unnecessary in view of the present response. The Applicant reserves the right to address in detail any such assertions or statements in the future.

The Applicant respectfully submits that the application is in condition for allowance, timely notification of which is kindly requested. Authorization is given to charge Deposit Account No. 50-3581 (GUID.618PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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